

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

JOYCE A. GIBSON
Respondent

Case No.: I-00-40343

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701 *et seq.*) and Title 22, Chapter 34 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-40343) served on January 23, 2001, the Government charged Respondent Joyce A. Gibson, who identifies herself as the Resident Director for the JAMAL Community Residence Facility (“CRF”), with violating the provisions of 22 DCMR 3418.3 by allegedly failing to consult with a licensed dietician every six months regarding the diets of the CRF residents.¹ The Government alleges that the violation occurred on October 31, 2000 at 3100 26th Street, N.E., and seeks a \$50.00 fine.

¹ 22 DCMR 3418.3 provides: “The Dietician and the Resident Director, or a qualified person designated by the Resident Director, shall review the therapeutic diets of a community residence facility’s residents at least every six (6) months.”

On February 8, 2001, Respondent entered a timely plea of Admit with Explanation, pursuant to D.C. Code § 6-2712 (a)(2). No explanation accompanied Respondent's plea, however. On February 20, 2001, this administrative court received a letter of explanation from Respondent and a request for a reduction or suspension of the fine. In the letter, Respondent asserted that phrasing of 22 DCMR 3418.3 confused her as to what was required for compliance. Specifically, Respondent asserted that, "[m]y personal interpretation of the ruling is that in my capacity as the Resident Director, I could review the diets which I routinely do every ninety days to ensure that the orders of the physicians are adhered to, in order to maintain a safe and healthy diet." Respondent also indicated that after she was notified of the alleged violation, she immediately contracted with a licensed dietitian in an effort to properly comply with the regulations' requirements.

On March 2, 2001, this administrative court issued an order permitting the Government to respond to Respondent's plea and request within ten (10) days. Because no response has been received within the specified time period, this matter is now ripe for a decision.

II. Findings of Fact

1. By her plea of Admit with Explanation, Respondent has admitted violating 22 DCMR 3418.3 on October 31, 2000.
2. On October 31, 2000, Respondent failed to review the therapeutic diets of her CRF's residents with a dietitian at least every six months.
3. Respondent has acknowledged responsibility for her unlawful conduct.

4. Respondent's violation 22 DCMR 3418.3 was unintentional in that she misinterpreted, albeit unreasonably, the requirements of that regulation.
5. Respondent acted promptly to correct the violation once it was called to her attention by immediately contracting with a licensed dietitian.
6. Respondent has not evidenced a history of non-compliance.

III. Conclusions of Law

1. On October 31, 2000, Respondent violated 22 DCMR 3418.3. Accordingly, Respondent is liable for a fine in the amount of \$50.00 *See* 16 DCMR 3219.3.
2. Respondent has requested a reduction or suspension of the \$50.00 fine. There are conflicting factors in this case that must be harmonized in determining whether a suspension or reduction of the fine is appropriate.
3. Several factors in this case support a reduction or suspension of the fine. Respondent has acknowledged responsibility for her unlawful conduct. Respondent has promptly made efforts to comply with the requirements of 22 DCMR 3418.3 by contracting with a licensed dietitian to review the therapeutic diets of the CRF residents. In addition, Respondent has not evidenced a history of non-compliance. *See* 18 U.S.C. § 3553; U.S.S.G. § 3E1.1; D.C. Code §§ 6-2703(b)(3) and (b)(6).
4. Several factors do not justify a reduction or suspension of the fine, however. Respondent asserts that her violation was unintentional because of her "personal interpretation" of the provisions of 22 DCMR 3418.3. Were the content of that regulation patently ambiguous, Respondent's position may have been deemed

- reasonable. The regulation unambiguously mandates, however, that the “dietitian and the Resident Director” review the therapeutic diets. 22 DCMR 3418.3 (emphasis supplied). A fair reading of this requirement does not suggest that the Resident Director, acting independently to review the diets, would be in compliance. Moreover, the nature of the violation is potentially serious in that the health of residents requiring therapeutic diets may be endangered by a failure to comply with the regulation.
5. On balance, this administrative court concludes that a small reduction of the fine is appropriate in this case. Accordingly, the \$50.00 fine sought by the Government will be reduced to \$40.00.

IV. Order

Therefore, upon the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondent shall pay a total of **FORTY DOLLARS (\$40.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid

amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6-22-01**

Mark D. Poindexter
Administrative Judge